



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

*Handwritten signature/initials*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,715	06/19/2001	Malcolm Richard Boyd	4-31830B	3629
1095	7590	01/28/2005	EXAMINER	
NOVARTIS CORPORATE INTELLECTUAL PROPERTY ONE HEALTH PLAZA 104/3 EAST HANOVER, NJ 07936-1080			MOSHER, MARY	
			ART UNIT	PAPER NUMBER
			1648	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE**

**U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

EXAMINER
----------

ART UNIT	PAPER
----------	-------

20050119

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

## DETAILED ACTION

### *Response to Amendment*

In response to applicants arguments and amendments, the rejections of record are withdrawn.

However, at least claim(s) 7-17, 20, 22 of the application are believed to interfere (35 U.S.C. § 135(a)) with at least claim(s) 2, 4, 18, 20, 24, 26, 32 of U.S. Patent 6,337,324. The patent claims priority of international application PCT/SE95/00114 and appears to be entitled to benefit for the purpose of a priority contest under 35 U.S.C. § 135(a).

The patent is not prior art under 35 U.S.C. § 102(e). See, e.g., In re Hilmer, 359 F.2d 859, 149 USPQ 480 (CCPA 1966).

Nevertheless, a patent cannot be issued to applicant until it prevails in an interference with the patent.

In any interference, applicant would be the junior party.

Accordingly, applicant is required to make a showing under 37 CFR § 41.202(d) (see Notice of Final Rule, 69 Fed. Reg. 49960, 50019 (Aug. 12, 2004)) as to why it would prevail in an interference with the patent. Applicant has not presented a showing.

Applicant is hereby given a period of two (2) months to present a showing.

If a showing is timely presented, it will be forwarded to the board where it will be evaluated pursuant to 37 CFR § 41.202(e).

If at the end of the two-month period, a showing is not timely presented, the application will be forwarded to the board where it would be expected that an order to show cause would be issued pursuant to 37 CFR § 41.202(d)(2).

Note that "New evidence in support of priority will not be admitted except on a showing of good cause." 37 CFR § 41.202(d)(2); Hahn v. Wong, 892 F.2d 1028, 13 USPQ 1313 (Fed. Cir. 1989); Huston v. Ladner, 973 F.2d 1564, 23 USPQ2d 1910 (Fed. Cir. 1992). Hence, applicant should not expect to make a showing in the first instance after the application is forwarded to the board for a determination of whether an interference should be declared.

The time for responding to this Office Action cannot be extended under the provisions of 37 CFR § 1.136(a) (2003). See 37 CFR § 1.136(a)(1)(i) (2003).

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on M-T and alternate F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1648

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1/25/05

  
**MARY E. MOSHER**  
**PRIMARY EXAMINER**  
**GROUP 1800 1600**